

Abstract

A Study to Enhance the Effectiveness of Women- and Family-Related Legislations (VII): Legal Responses to Diversification of Families

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This seventh-wave study aims to enhance the effectiveness of women- and family-related legislations, focusing on legal responses to diversification of families. The study specifically seeks the possibilities of social and legal approvals of relations other than legal marriage. Although family members in reality lead their lives in a diverse manner, the laws governing families are laid down with a focus on legal marriage. As such, such laws are perceived as exclusive to legal marriage by people who wish to form a family outside of a legal marriage. Therefore, this study seeks ways

to overcome the gap between the law and reality, eliminate discriminations that diverse family members experience in reality, and grant legal and social rights and obligations to them all. Based on the experience that it is difficult to make a drastic change in the rule of law surrounding families, the study explores multiple possibilities, ranging from possible responses at the present phase grounded in public awareness to directions that should be accepted in the long term in order to examine legal responses to diversification of families.

Section I overviews the purpose, contents, and methods of the study. Section II identifies changes in Korean families using official statistics, and examines the gap between the changes and current family norms. Although there has been a rapid change in the structure and perception of family since the 1990s, there has been, in fact, a lack of legal efforts to incorporate the change in the laws. As each person has his or her own family, 'family' cannot be defined in a concept nor can the government force people to follow a stereotypical form of family today. Therefore, legal responses to accept the current diversification of families are required to prevent any discrimination against the choices of individuals.

Section III analyzes the questionnaire survey conducted to identify the general public's perceptions of family and to use the findings as rudimentary data for making policies. Section IV reveals the current state of discriminations that unmarried families face, and analyzes the results of the focus group interview (FGI) carried out to grasp needs for legal responses to resolve the discriminations and institutional disadvantages. The questionnaire survey shows that the concept of family and the perception of cohabitation moves toward alternative directions. In spite of this,

the voice against acknowledging specific social benefits and the right to share the benefits is still stronger than the voice acknowledging them. These results in and of themselves indicate directions for the way that legal and social responses to diversification of families should change.

Section V examines the scope of legal inclusion of family or family-like relations and reviews overseas cases by dividing them into two types: one type is to protect the legal status of de facto life community other than marriage, and the other is to guarantee legal status of life community with its registration as a requirement. Then, this section considers implications of this examination. According to the legislation cases of foreign countries that proactively made legal responses to diversification of families, these countries in general took phased steps from the time when there was no legal consideration for same-sex couples like in Korea, to when they legislated the Act for Life Partners to resolve discrimination for the purpose of same-sex couples only or for both same-sex and opposite-sex couples, and to when they allowed same-sex couples to access the marriage system on the ground that blocking their access is against the principle of equal treatment. Because Korea is still in the phase where there is no legal consideration for same-sex couples, it is necessary to have in-depth social discussions regarding making the marriage system available to same-sex couples as well.

Section VI specifically suggests ways for legal responses to diversification of families based on the above-mentioned results of the study. More than anything else, no uniform concept of family can exist because each law has its own functions that fit in to the purpose of the law. Therefore, it is necessary to divide the concept of family into segments. Article 36-1 of the Constitution

of the Republic of Korea should not be interpreted as excluding or discriminating against new forms of family other than traditional marriage and family. It is also necessary to make a grand shift in the basic perception of family as described in the Framework Act on Healthy Homes and the Framework Act on Low Birth Rate in an Aging Society legislated on the basis of discourses on family crisis. It is also necessary to expand the scope of regulation from marriage and parent-child relations centered on the concept of kinship to diverse types of partnership that can exist other than legal marriage as the basis of individuals' formation of family. In other words, it is necessary to develop theories of interpretation and legislation to expand private autonomy, such as regulating parent-child relations arising from partnership and a more expanded concept of kinship. It will take time to legislate laws due to the movement of making new laws and the negative social perception of a broader concept of family. Considering this, this study suggests that as a way of phased approach, inconveniences of diverse families in daily life be reduced indirectly by making active use of existing systems; laws and social security guidebooks be made and promoted so as to protect them in advance from possible insecure circumstances; and approach be made at the regional level similarly to that of Japan.

Keyword: Diversification of families, Marriage, Cohabitation, Family law, Family related legislations